

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

Evelyn Seefeldt,)	
Charging Party,)	HRC CASE NO. 011014714
)	
v.)	
)	ORDER OF REMAND
Western States Insurance,)	
Respondent.)	

Charging Party, Evelyn Seefeldt (Seefeldt), filed a complaint with the Department of Labor and Industry (Department) alleging discrimination in employment on the basis of age. Following an informal investigation, the Department's Human Rights Bureau determined that a preponderance of the evidence did not support Seefeldt's allegations that Respondent, Western States Insurance, discriminated against Seefeldt. The Department issued a Notice of Dismissal. Seefeldt filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on September 14, 2011. Penelope Strong, attorney, appeared and argued on behalf of Seefeldt. Candace Fetscher, attorney, appeared and argued on behalf of Western States Insurance.

The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. *Mont. Code Ann. § 49-2-511(2)*. After careful consideration, the Commission concludes the determination of the Department to dismiss the complaint in this case is an abuse of discretion.

The investigator found Seefeldt presented a prima facie case of age discrimination. Seefeldt is a member of a protected class; qualified to do the work; was subjected to the adverse employment action of termination; and was replaced by a younger worker. However, the investigator found Western States Insurance offered

legitimate, nondiscriminatory reasons for Seefeldt's lay-off, which included the general business downturn; the fact that Seefeldt had smallest "book of business;" that Seefeldt's most recent performance evaluation rated her lower than all but one other employee in Billings office; and that Seefeldt did not show a willingness to contribute to the commercial lines department. The younger person who was hired to take over Seefeldt's work also was hired shortly before Seefeldt was laid-off and worked as the office receptionist on a half-time basis. The investigator determined that Seefeldt failed to demonstrate the employer's reasons for her lay-off were pretext for age discrimination.

The Commission notes that the employer used Seefeldt's most recent and relatively less complementary performance evaluation as one factor in support of the selection of Seefeldt for lay-off. Yet, the investigator declined to interview several witnesses identified by Seefeldt, who would attest to Seefeldt's abilities and high level of performance at work. Seefeldt argued that the omitted witnesses would also counter the employer's assertion that Seefeldt was unwilling to contribute to the commercial lines department. The Commission further questions whether the investigator thoroughly examined the employer's decisions to reduce "book of business" of Seefeldt and other older employees to determine whether a pattern of age discrimination existed at the Billings office of Western States Insurance.

For the foregoing reasons, the Commission determines that the investigator abused her discretion and failed to consider all available information. Therefore, the Commission sustains the objection and the case is hereby remanded for hearing to the Hearings Bureau pursuant to Mont. Code Ann § 49-2-505.

Nothing in this order precludes the parties from engaging in the mediation or other settlement negotiations that would normally occur if the Department's investigative report had found cause. See, *Mont. Code Ann. § 49-2-504(2)(b)*.

IT IS HEREBY ORDERED, that Seefeldt's objection is **sustained**. The Commission reopens and remands the case to the Hearings Bureau for hearing.

DATED this 30th day of September 2011.

A handwritten signature in cursive script, appearing to read "L.M. Minich".

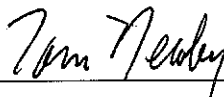
L.M. Minich, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 30th day of September 2011.

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